

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DOUGLAS PRESTON, ROXANA ROBINSON,
GEORGE SAUNDERS, SCOTT TUROW, and
RACHEL VAIL, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

OPEN AI INC., OPENAI OPCO LLC, OPENAI
GP LLC, OPENAI, LLC, OPENAI GLOBAL
LLC, OAI CORPORATION LLC, OPENAI
HOLDINGS LLC, OPENAI STARTUP FUND I
LP, OPENAI STARTUP FUND GP I LLC,
OPENAI STARTUP FUND MANAGEMENT
LLC, and MICROSOFT CORPORATION,
Defendants.

Consolidated Cases:

Case No. 1:23-cv-08292-SHS

Case No. 1:23-cv-10211-SHS

JONATHAN ALTER, KAI BIRD, TAYLOR
BRANCH, RICH COHEN, EUGENE LINDEN,
DANIEL OKRENT, JULIAN SANCTON,
HAMPTON SIDES, STACY SCHIFF, JAMES
SHAPIRO, JIA TOLENTINO, and SIMON
WINCHESTER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

OPENAI, INC., OPENAI OPCO LLC, OPENAI
GP, LLC, OPENAI GLOBAL LLC, OAI
CORPORATION, LLC, OPENAI HOLDINGS,
LLC, OPENAI STARTUP FUND I LP, OPENAI
STARTUP FUND GP I LLC,
OPENAI STARTUP FUND MANAGEMENT
LLC, and MICROSOFT CORPORATION,

Defendants.

DEFENDANT MICROSOFT CORPORATION'S RESPONSE TO PLAINTIFFS'
MOTION FOR LEAVE TO FILE UNDER SEAL

Pursuant to this Court's Individual Rules and Practices 5(B), Defendant Microsoft Corporation responds to Plaintiffs' Motion for Leave to File Under Seal (Case No. 1:23-cv-08292, ECF No. 167; Case No. 1:23-cv-10211, ECF No. 140) filed in connection with Plaintiffs' letter motion to compel. For the reasons stated below, Microsoft respectfully requests the Court grant Plaintiffs' motion for leave to file under seal.

Specifically, Microsoft requests that the redacted material in Plaintiffs' Letter Motion and exhibits thereto be sealed, specifically:

1. One sentence on page 3 of the Letter Motion (Case No. 1:23-cv-08292, ECF No. 169; Case No. 1:23-cv-10211, ECF No. 142),
2. Two sentences and five bullet points of Exhibit 3 (Case No. 1:23-cv-08292, ECF No. 169-3; Case No. 1:23-cv-10211, ECF No. 142-3),
3. Five sentences of Exhibit 4 (Case No. 1:23-cv-08292, ECF No. 169-4; Case No. 1:23-cv-10211, ECF No. 142-4), and
4. Two sentences of Exhibit 5 (Case No. 1:23-cv-08292, ECF No. 169-5; Case No. 1:23-cv-10211, ECF No. 142-5).

Although “[t]he common law right of public access to judicial documents is firmly rooted in our nation’s history,” this right is not absolute and courts “must balance competing considerations against” the presumption of access.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). “[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied to material introduced at trial, or in connection with dispositive motions” *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). “[W]hile a court must still articulate specific and substantial

reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings.” *Id.*

The redactions in Plaintiffs’ letter motion and exhibits are applied to material that (1) describes the substance of or directly quotes an agreement between Microsoft and OpenAI, and/or (2) describes the substance of various other documents produced by Microsoft in this litigation that disclose information about Microsoft and OpenAI. Microsoft designated this material as highly confidential and/or confidential under the Protective Order in this case. The redacted material is appropriate for sealing, as each portion shows or describes Microsoft’s confidential and sensitive information about its business dealings and ongoing relationship with OpenAI, its current or past business and financial practices, and/or other competitive business information. These are the types of information commonly found to warrant sealing. *See PDV Sweeny, Inc. v. ConocoPhillips Co.*, No. 14-CV-5183 AJN, 2014 WL 4979316, at *3 (S.D.N.Y. Oct. 6, 2014) (concluding that sealing was appropriate with respect to certain documents “on the basis of their containing sensitive commercial information affecting the parties’ ongoing relationship”); *Regeneron Pharms., Inc. v. Novartis Pharma AG*, No. 1:20-CV-05502, 2021 WL 243943 (S.D.N.Y. Jan. 25, 2021) (finding that requested redactions were “narrowly tailored to protect competitive business information, including the non-public terms of [various agreements]” and concluding “that the sensitivity of this information outweighs the presumption of access”); *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.’”); *Graczyk v. Verizon Commc’ns, Inc.*, No. 18 CIV. 6465 (PGG), 2020 WL 1435031, at *9 (S.D.N.Y. Mar. 24, 2020)

(collecting cases) (“[C]ourts in this Circuit routinely permit parties to redact sensitive financial information . . .”).

Accordingly, in order to maintain the confidential nature of Microsoft’s information, Microsoft respectfully requests that the Court grant Plaintiffs’ Motion for Leave to File Under Seal (Case No. 1:23-cv-08292, ECF No. 167; Case No. 1:23-cv-10211, ECF No. 140).

Dated: July 24, 2024

Respectfully submitted,

/s/Jared B. Briant

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